

III. Remarks

A. Amended and New Claims

Claims 1, 17 and 73 have been amended to cover preferred embodiments of the invention. Support for the amendment to claim 1 that the preparation is uncoated is provided in the specification at paragraphs [0036] and [0227]. Support for the amendment in claims 1, 17 and 73 to the graft polymers is set forth in the specification at paragraph [0054]. Support for new claims 74–93 is provided in the specification by paragraphs [0036], [0037], [0051] and [0054].

B. Objections to Claims 4–6

The Examiner has objected to claims 4–6 because the term “closure” appears in line 2 of each of the claims rather than the term “enclosure,” which would be consistent with the entire specification.

Claims 4–6 have been so amended.

C. Rejection of Claims 56–72 Under 35 U.S.C. § 112, Second Paragraph

The Examiner has rejected claims 56–72 under 35 U.S.C. § 112, Second Paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention.

Claims 56–72 have been canceled.

**D. Rejection of Claims 1–46 Under 35 U.S.C. § 103(a)
As Being Unpatentable Over United States Patent No. 5,759,888 to Heile et al.**

The Examiner has rejected claims 1–46 under 35 U.S.C. § 103(a) as being unpatentable over United States Patent No. 5,759,988 to Heile et al. (“Heile”).

1) The Position of the Examiner

The Examiner’s reasons for the rejection are as follows:

Heile teaches a detergent article coated with a film enclosure which includes polyalkyloxazoline and polyesters, among many, having a film thickness from about 1 mil to 15 mil (equivalent to about 375 μm). Heile, however, fails to disclose the properties of the unfilled enclosure as those recited in the claims, e.g., deformability, recovery rate and crushing resistance.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to reasonably expect the film enclosure of Heile to exhibit similar properties as those recited because structurally similar compounds are

generally expected to have similar properties, *see In re Gyurik*, 596 F.2d 1012, 201 USPQ 552. The reference is deemed to teach the claimed composition; the applicant or applicants need to show that his, her, or their invention is actually different from and unexpectedly better than the prior art, *see In re Best*, 195 USPQ 430, 433, 434 (CCPA 1977).

(Examiner's Action, page 3, line 14 to page 4, line 3).

2) Applicants' Claimed Products and Process Compared to Heile

(a) Claims 1-16 and 74-93

Applicants' portioned washing, rinsing or cleaning products as claimed in claim 1 (and in claims 2-16 and 74-93 which are dependent directly or indirectly upon claim 1) comprise an uncoated preparation surrounded by an enclosure. In other words, the enclosure is part of the product.

Heile discloses an alkaline detergent article comprising a solid block detergent mass having a barrier coating. The barrier coating provides safety and stability to the detergent mass (column 3, lines 2-5) and is therefore an essential part of the article. Barrier coatings used by Heile are disclosed at column 8, line 13 to column 10, line 10. The coatings appear to be liquid based and differ from Applicants' claimed enclosures chemically and structurally. Applicants' claimed enclosures have a wall thickness.

The Heile detergent article is optionally enclosed in a film enclosure which is removed prior to use: "In use the film envelope if used is opened, the detergent article removed from the envelope and inserted into a dispenser." (Column 3, lines 53-55).

As Applicants' claimed washing, rinsing or cleaning product is uncoated and includes a film enclosure, and Heile's detergent is coated and includes no enclosure when used, Heile does not disclose, exemplify or even suggest to one skilled in the detergent art how to obtain Applicants' claimed product. Accordingly, a rejection of Applicants' pending claims 1-16 and new claims 74-93 under 35 U.S.C. § 103 as unpatentable over Heile is untenable and should not be made.

(b) Claims 17-54 and 73

Claims 17-54 and 73 are directed to washing, rinsing or cleaning products and process for preparation of the product. All of the claims are directed to a preparation that is surrounded by an enclosure. The enclosure comprises one or more materials selected from the group consisting of polyacrylamides, polystyrenesulfonates, polyurethanes, graft polymers obtainable by free radical

polymerization of vinyl esters of aliphatic C₁-C₂₄ carboxylic acids in the presence of polyethers with a number average molecular weight of at least 300 and mixtures thereof. Heile does not exemplify, disclose or suggest any of Applicants' claimed ingredients to make Heile's disposable film enclosure.

Accordingly, as there is no disclosure, exemplification or suggestion in Heile of the ingredients used to form Applicants' claimed enclosure, and in view of the differences in the composition and structure of Applicants' and Heile's products as described in connection with claims 1-16 and 74-93, one of ordinary skill in the detergent art cannot obtain Applicants' claimed invention from the disclosure in Heile. Therefore, a rejection of claims 17-54 and 73 under 35 U.S.C. § 103 as unpatentable over Heile is untenable and should not be made.

E. Rejection of Claims 1-46 and 53-54 Under 35 U.S.C. § 103(a)
As Being Unpatentable Over United States Patent No. 6,040,286 to Huff

The Examiner has rejected claims 1-46 and 53-54 under 35 U.S.C. § 103(a) as being unpatentable over United States Patent No. 6,040,286 to Huff ("Huff").

1) The Position of the Examiner

The Examiner's reasons are as follows:

Huff teaches a laundry product contained in a detergent bag which is made from nonwoven polyester material having a thickness in the range of 2.0 mm – 8.0 mm (equivalent to 2,000 µm – 8,000 µm). Huff, however, fails to disclose the properties of the unfilled enclosure as those recited in the claims, *e.g.*, deformability, recovery rate and crushing resistance.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to reasonably expect the detergent bag of Heile to exhibit similar properties as those recited because structurally similar compounds are generally expected to have similar properties, *see In re Gyurik*, 596 F.2d 1012, 201 USPQ 552. The reference is deemed to teach the claimed composition; the applicant or applicants need to show that his, her, or their invention is actually different from and unexpectedly better than the prior art, *see In re Best*, 195 USPQ 430, 433, 434 (CCPA 1977).

(Action at page 4, lines 8-18).

2) Applicants' Claimed Products and Process Compared to Huff

Applicants' claimed product and the process to make the product are described hereabove in connection with the discussion of Heile. Applicants' product is intended for use during the washing, rinsing and cleaning cycles in a clothes washer.

The Huff patent describes a washer/dryer pouch-type detergent bag and method of use. The through-the-washer-dryer pouch-type detergent bag is preferably made from material that is air and water permeable — *i.e.*, non-woven polyester. (Column 1, line 65 to column 2, line 1). According to Huff, the bag contains detergent particulates which are dissolved during the washing machine cycle and water softener/anti-static ingredients which are not dissolved. After clothes are washed in the washing machine, "[t]he clothes and the wadded detergent bag are then transferred into the clothes dryer, where the heat in the dryer causes the fabric softener/anti-static ingredients to be released into the clothes. (Column 2, lines 8–24).

The fact that Applicants' claimed product is used during the washing process, whereas part of Huff's product survives the washing process in order to be used during the drying process, means that Applicants' claimed product differs from the Huff product in composition and structure. Applicants' claimed enclosure, which does not include woven polyethylene, the only specific material identified in Huff, facilitates the use of Applicants' active product during clothes washing. The Huff pouch is clearly designed to inhibit the use of the fabric softener/antistatic agent during clothes washing. In view of the differences in Applicants' claimed product and the Huff product after their use during the washing process, the ingredients used to make Applicants' claimed enclosure and Huff's pouch cannot be the same.

Accordingly, as there is no disclosure, exemplification or suggestion in Huff of the ingredients used to form Applicants' claimed enclosure, and in view of the differences in the composition and structure of Applicants' and Huff's products, one of ordinary skill in the detergent art cannot obtain Applicants' claimed invention from the disclosure in Huff. Therefore, a rejection of claims 1–54 and 73–93 under 35 U.S.C. § 103 as unpatentable over Huff is untenable and should not be made.

F. Rejection of Claims 1–46, 53–54 and 73 Under 35 U.S.C. § 103(a)
As Being Unpatentable Over International Application No. WO 02/06431 to Weber

The examiner has rejected claims 1–46, 53–54 and 73 under 35 U.S.C. § 103(a) over Published International Application No. WO 02/06431 to Weber ("Weber"). As the published international

application is in German, the Examiner has referenced corresponding United States Patent Application No. US 2004/0029764 in explaining the reasons for the rejection.

1) The Position of the Examiner

The Examiner's reasons are as follows:

Weber teaches a portion of a detergent which is contained in one or more dimensionally stable hollow bodies with at least one compartment, the portion comprising (a) at least one formulation with a detergent action; (b) at least one envelop entirely or partially encompassing at least one formulation according to (a), consisting of a non-pressed material which disintegrates in washing or rinsing conditions and which gives the hollow body(ies) dimensional stability; and (c) optionally, one or more devices for forming compartments in the dimensionally stable hollow body(ies), and to a method for producing a detergent portion which is produced by injection molding or solidifying (*see* abstract of WO '431). Appropriate materials for the hollow body comprise one or more materials from the group consisting of polyacrylamides, oxazoline polymers, polystyrenesulfonates, polyurethanes and mixtures thereof (*see* page 43 paragraph [0557] of the US Pub '764). The wall thickness of the hollow body is from 100 to 5000 μm (*see* page 24 paragraph [0344] of US Pub '764). Weber, however, fails to disclose the properties of the unfilled enclosure as those recited in the claims, *e.g.*, deformability, recovery rate and crushing resistance.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to reasonably expect the film enclosure of Weber to exhibit similar properties, *see In re Gyurik*, 596 F.2d 1012, 201 USPQ 552. The reference is deemed to teach the claimed composition; the applicant or applicants need to show that his, her, or their invention is actually different from and unexpectedly better than the prior art, *see In re Best*, 195 USPQ 430, 433, 434 (CCPA 1977).

(Examiner's Action, page 5).

2) Applicants' Claimed Invention Compared to Weber

In Applicants' invention, the claimed portioned washing, rinsing or cleaning products and the process used to make the products set forth that a preparation is surrounded by an enclosure. The enclosure is deformable by a force $F_1 > 0 \text{ N}$ and $\leq 500 \text{ N}$ along a path s_1 and, after the influence of the force has ceased, returns in the direction of its original shape and/or after the influence of the deformation force has ceased, has a recovery rate $v > 0 \text{ mm/min}$ and $\leq 1000 \text{ mm/min}$. In summary, the enclosure is deformable by a defined force that may be small, *i.e.*, over 0 N. However, once the force ceases, the unfilled enclosure returns toward its original shape.

Weber relates to detergent portions containing at least one deterative formulation wholly or partially contained in a ***dimensionally stable hollow body*** (Abstract) (*emphasis added*). Weber defines this container in paragraphs [0033] and [0034] of the Published United States Application as follows:

[0033] The term “dimensionally stable hollow body” is understood in accordance with the invention to mean that the shaped bodies containing the detergent portions have an intrinsic dimensional stability which enables them, under normal conditions of production, storage, transit, and handling by the consumer, to have a structure which is stable toward fracture and/or pressure and which does not collapse and which also does not change under said conditions over prolonged periods of time. It is irrelevant here in accordance with the invention whether this structural stability results solely from the properties of the dimensionally stable hollow body which come about as a result of various parameters, specified below, or (also) from the presence of compartmentalization means and/or (also) from the filling with deterative formulations. In preferred embodiments of the invention the dimensionally stable hollow bodies themselves already have a sufficient intrinsic dimensional stability, since this has advantageous consequences for passage in machines in the course of the manufacture of the hollow bodies and in the course of filling during production of the detergent portions of the invention.

[0034] . . . the hollow bodies of the invention constitute an independent, ***self-supporting*** envelopment which generally exists prior to filling with one or more deterative components and which is subsequently filled.

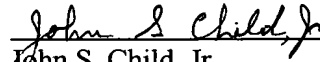
Thus, the Weber “dimensionally stable hollow body” is “self-supporting” and “shaped,” *i.e.*, is not deformable by a small force, let alone returned toward its original shape when the force ceases. Applicants’ claimed enclosure is not self-supporting and shaped, in that its shape deforms by application of a small amount of force. Given the fundamental differences in the structure of Applicants’ claimed enclosure and Weber’s hollow body, it appears that they cannot be made with the same materials. In view of that distinction in structure and composition, one of ordinary skill in the detergent art cannot, through the disclosure in Weber, obtain Applicants’ claimed products or the process used to make Applicants’ claimed product. Accordingly, a rejection of Applicants’ claims 1–54 and 73–94 under 35 U.S.C. § 103(a) as unpatentable over Weber is untenable and should not be made.

IV. Conclusion

It is believed that the above Amendment and Remarks constitute a complete Response under 37 C.F.R. § 1.111 and that all grounds for objection stated in the Action have been adequately rebutted or overcome. A Notice of Allowance in the next Action is therefore requested. The Examiner is requested to telephone the undersigned counsel if any matter that can be expected to be resolved in a telephone interview is believed to impede the allowance of the pending claims of Application Serial No. 10/821,165.

Respectfully submitted,

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